

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

United States of America,

Plaintiff,

Case No. 12-20387

-v-

Smiley Villa,

Defendant.

/

DETENTION HEARING

BEFORE THE HONORABLE LAURIE J. MICHELSON
United States District Magistrate
Theodore Levin United States Courthouse
231 West Lafayette Boulevard
Detroit, Michigan
May 10, 2012

APPEARANCES:

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1 Detroit, Michigan

2 May 10, 2012

3 3:25 p.m.

4 * * *

5 THE CLERK: The Court calls Case 12-30146, USA versus
6 Smiley Villa.

7 MS. MOHSIN: Your Honor, good afternoon. Saima
8 Mohsin appearing on behalf of the United States.

9 This is the date and time set for a detention hearing
10 in this matter. The Government is ready to proceed by proffer.

11 MR. MORGAN: Good afternoon, your Honor. For the
12 record, Richard H. Morgan, Jr., appearing for Mr. Villa.
13 We're ready to proceed also by proffer.

14 THE COURT: Okay. Ms. Mohsin.

15 MS. MOHSIN: Your Honor, let me begin first by
16 informing the Court that we do not believe that this is a
17 presumption case. This case involves the possession of a
18 firearm by a felon.

19 We are going to spend a little bit of time this
20 afternoon, your Honor, discussing the underlying facts of
21 this case, which involve a particularly violent assault and
22 gang activity, and those are primarily the reasons why the
23 Government is seeking detention in this case.

24 Pursuant to 3142(f), there are certain circumstances
25 that the Court should consider in making its determination,

1 and I would like to address some of those circumstances.

2 First and foremost, I want to talk about where this
3 Defendant resides. He does reside in Michigan. That is our
4 information. He doesn't really have any family or community
5 ties in the State of Michigan.

6 There is one individual by the name of April Sykes,
7 she was here yesterday, and for some period of time she was
8 here today. It was my understanding that she was going to
9 testify.

10 But I did inform Counsel that we learned that she had
11 two open warrants for her arrest and so she did not testify
12 here today. Those warrants, I bring to the Court's attention,
13 because the Defendant resides with someone who has a criminal
14 history and who herself is wanted for criminal activity in
15 other jurisdictions.

16 This is a Defendant whose ties to Michigan, as
17 reported in the Pretrial Services report, are limited to
18 this individual, his girlfriend, and two children. There
19 are no other ties reported in the State of Michigan by this
20 Defendant.

21 He is employed, according to the Pretrial Services
22 report, and has only been employed for approximately one
23 month. I submit to you that that is significant, because
24 other than that one reported employment he has had a
25 significant period of unemployment.

1 Though not reflected in his -- his Pretrial Services
2 report, I don't know what this Defendant's educational level
3 is, but it appears from the Pretrial Services report that his
4 employment prospects are not particularly promising at this
5 point. He does have the job that he has had for one month,
6 but again, it's not a very longstanding employment that he has
7 had.

8 What he does have is a very lengthy criminal history.
9 Three convictions at the age of 18, three felony convictions
10 early on after he was 18 years old, and then one later on in
11 life.

12 He has had 14 different arrests since 1993. Four of
13 them were felonies. One of them involved the -- an assault
14 with a dangerous weapon and a domestic violence, all in one
15 case.

16 He has had six misdemeanor convictions and four of
17 them have involved domestic violence or assaults. And those
18 have been since 1993. He has also had an additional three
19 assault cases, three assault arrests --

20 THE COURT: 1993 or 2000?

21 MS. MOHSIN: I apologize, 2003.

22 So essentially in the last nine years this Defendant
23 has accrued seven arrests for assaults, of which -- which
24 led to four convictions. These are predominantly, although
25 perhaps not exclusively, domestic violence related assaults.

1 And I raise that, because that is significant when
2 you take that information and compare it to the factual
3 allegations that are contained in the complaint. I'll get
4 to that in a minute.

5 But it appears that this Defendant has a history
6 of being involved with assaults on what I will classify as
7 someone that perhaps is not of the same size and shape as
8 the Defendant, perhaps someone who is not as strong as the
9 Defendant.

10 The Defendant has a 16-year-long drug history. He
11 has admitted to Pretrial Services that he has been involved
12 in regular use of marijuana, cocaine and methamphetamine.

13 Despite his assertion to Pretrial Services that his
14 last meth use, meth use was two weeks ago, when tested for
15 methamphetamines and for drugs upon his arrest two days ago,
16 he tested positive for methamphetamines. So I submit to you,
17 your Honor, that his use of methamphetamine is -- is perhaps
18 more regular than even what is acknowledged in that report.

19 This is a Defendant who has a very important
20 relationship here, your Honor, and that is a relationship
21 with the Devil's Disciples motorcycle gang. That's a violent
22 gang. It is a motorcycle gang that is headquartered here in
23 Michigan. It has chapters in a number of different states.
24 Its national headquarters is Michigan. And this is a
25 Defendant who has acknowledged to the FBI that he is a member

1 of this gang.

2 Becoming a member of this gang requires acceptance by
3 the gang. There are rules and bylaws that gang members have
4 to abide by. Once an individual becomes a member of this
5 gang, they cannot leave this gang without permission from the
6 leadership of the gang. He is a member of this gang.

7 And if the Court has had an opportunity to review the
8 underlying complaint that I have made some reference to here,
9 it talks about the facts that gave rise to the Defendant's
10 possession -- or arrest for the possession of a firearm in
11 connection with this case.

12 In early January of this year, your Honor, this
13 Defendant and others, gang members wearing gang colors,
14 specifically leather jackets that have displayed on the back
15 the name, Devil's Disciples, and the colors of this particular
16 gang prominently displayed so that anyone who walks past them,
17 drives past them, sees them in a bar, it's very clear to them
18 that this individual belongs to this motorcycle gang.

19 He went into this bar called the New York New York
20 Bar. The New York New York Bar is in an area of Michigan that
21 is the territorial, so to speak, jurisdiction of the Devil's
22 Disciples. That is where their national headquarters are.
23 They take pride in their territory and they do not permit
24 rival gangs to come into their territory, you know, without --
25 unannounced, so to speak.

1 In this instance, this Defendant and another went
2 into the New York New York Bar. They acknowledged later to
3 the FBI that they considered that to be their territory.

4 They observed an individual wearing a black leather
5 jacket. The black leather jacket had some initials on it
6 that said BLS.

7 This Defendant and his cohorts, other members of the
8 Devil's Disciples, then approached that individual. They
9 demanded that he give the jacket to them. They assaulted him.
10 They broke his jaw in two places and rendered him unconscious.
11 Then they seized his jacket off of his body. They took that
12 jacket home.

13 At some point the FBI was able to obtain information
14 that led to the execution of a search warrant at this
15 Defendant's home and they found several items of significance.
16 They found a lot of evidence that this Defendant is, in fact,
17 a member of this gang.

18 In addition to his gang colors, as reported by
19 witnesses in the bar, they found the gang colors that he was
20 wearing that night in his home. They found business cards
21 and photographs and other documents, such as the national
22 bylaws, membership lists of individuals that belonged to that
23 gang, you know, addresses, things like that, establishing his
24 connection to this violent motorcycle gang.

25 THE COURT: Were there witnesses in the bar to the

1 assault?

2 MS. MOHSIN: There were witnesses to the bar -- to
3 the assault.

4 THE COURT: Did any identify the Defendant?

5 MS. MOHSIN: Your Honor, there were witnesses, some
6 of which have made some identifications, although I'm not
7 prepared to give that information to you now, because I don't
8 have it handy with me.

9 More -- more significantly, though, and I'm going to
10 get to the Defendant's -- the strength of the evidence in this
11 case.

12 THE COURT: Okay.

13 MS. MOHSIN: First and foremost, your Honor, the
14 jacket of the individual that was assaulted in the bar was
15 found in this Defendant's home, and cut up, and he was
16 remaking it into another jacket.

17 Ironically, or perhaps unfortunately for the
18 individual who was assaulted, he was a 50-plus-year-old man
19 who this Defendant and the other Defendants believed to be a
20 member of a rival motorcycle gang.

21 If the Court recalls, he, in fact, was not a member
22 of any gang. He was there enjoying the music. There was some
23 sort of a concert or, you know, band playing and that jacket
24 that he was wearing belonged to that particular motor --
25 excuse me -- heavy metal band. So the --

1 THE COURT: The BLS isn't a rival gang?

2 MS. MOHSIN: Yeah. Black Label Society. It's not
3 the Black Pistons motorcycle club.

4 THE COURT: Okay.

5 MS. MOHSIN: So this truly innocent victim, who has
6 had a broken jaw, it's my understanding that he had other
7 health problems, carried a cane. I mean, he was obviously
8 someone that was weaker than this Defendant.

9 And I had brought to the Court's attention earlier
10 that he has these domestic violence cases from the past, you
11 know, exhibiting that this is an individual who is involved
12 in perpetrating assaults on individuals who are perhaps less
13 capable than him physically to defend themselves.

14 And as I indicated to the Court earlier, this
15 individual, when he was assaulted, he broke -- his jaw was
16 broken in two places and he was rendered unconscious by this
17 vicious attack by the Defendant and his cohorts inside that
18 bar.

19 Getting back to the search warrant and what was found
20 there, the FBI found the vest that belonged to the victim of
21 that assault inside of Mr. Villa's house. They found other
22 items that belonged -- that had been pinned on the vest that
23 had been removed from that vest and placed on the Defendant's
24 own vest. He had taken items from that vest and put them on
25 his own vest.

1 They found a scale. They found knives. They found
2 a shotgun and they found shotgun shells. And interestingly
3 enough, they found colors from a third motorcycle gang, the
4 Magnificent Motorcycle Club.

5 This is significant, your Honor, because one of the
6 objectives, one of the methods by which a motorcycle gang or
7 really any gang maintains their status within their territory
8 is by ensuring through acts of violence that other rival gangs
9 do not commit crimes or even have a presence in their
10 territory.

11 And that's really what this underlying offense was
12 about. It's not charged as we stand here today, however, the
13 Government intends to pursue charges in connection with that
14 assault that was perpetrated on that individual and those
15 charges will be forthcoming in the form of an indictment in
16 the very near future.

17 So I submit to you, your Honor, the facts of the case
18 are strong. The Defendant made admissions to the FBI at the
19 time. He admitted that he had been a member of the motorcycle
20 gang for a year, and previously he had been a member of
21 another motorcycle gang called the Next of Kin motorcycle
22 gang.

23 He admitted that at -- on the night that the assault
24 was -- had occurred near closing time, he and -- though he
25 would not identify the other individual, he said that he and

1 his, quote, neighbor stopped at the New York New York Bar in
2 Chesterfield Township, where they parked their motorcycle --
3 motorcycles outside of the front door, went inside, and they
4 were both wearing their Devil's Disciples colors. And he
5 indicated that this was a bar that the Devil's Disciples
6 regularly hung out at, and in fact, considered their territory.

7 According to the Defendant, it appeared that the
8 victim was wearing Black Pistons, quote/unquote, colors.
9 And Mr. Villa explained that the Black Pistons are a rival
10 motorcycle gang.

11 Mr. Villa stated that the Devil's Disciples
12 considered the New York New York Bar their territory and he
13 said, quote, "It's DD territory. It's an insult to come in
14 the area. Black Pistons shouldn't be in the DD area."

15 And then the Defendant admits to having confronted
16 the victim and he admits to having pushed him. The Defendant
17 says that his cohort, his neighbor, who he would not identify
18 to the FBI, physically assaulted the victim; that the
19 Defendant did not.

20 But I submit to you, your Honor, that the facts speak
21 for themselves in this case. This is a very serious assault.
22 This is an individual whose association with the -- with this
23 gang makes him a danger to the community.

24 The fact that he has, in addition, a shotgun with
25 shotgun shells in his home when he has four felony convictions

1 and multiple domestic violence convictions show that this is
2 a Defendant who poses a very real and ongoing danger to the
3 community.

4 In addition, the fact that he has very limited ties
5 to this community, that he has very limited job prospects, has
6 only been employed for one month, all are factors that the
7 Court ought to consider in determining whether this Defendant
8 ought to be released.

9 And we submit to you, your Honor, that this Defendant
10 should not be released. He should be detained pending trial.

11 Thank you.

12 THE COURT: Thank you.

13 Mr. Morgan.

14 MR. MORGAN: Wow. That was a lot, wasn't it?

15 Let me say this, Judge: First of all, he is charged
16 with felon in possession of a firearm. That's the charge.
17 Nothing about an assault.

18 And far as I know, assaulting someone has not become
19 a federal offense. Now, I'm sure they may have come up with
20 a way, but as far as I know, it's not. And as she said, he
21 doesn't admit to assaulting anybody. Someone else assaulted
22 the young man.

23 Let's talk about his ties to the community. At age
24 18 he was arrested, in 1993, and -- and -- and was convicted
25 of a crime in Saginaw. You have the presentence report. You

1 see that there are numerous convictions, all in the State of
2 Michigan. Not a -- not a one -- he said he came to Michigan
3 when he was three years old, been here ever since. He is 37,
4 been here 34 years. Substantial ties to the community, even
5 if they are by way of being in -- housed in the Department of
6 Correction.

7 He has been convicted of three felonies. Three --
8 I'm sorry, four felonies. Three of those took place
9 approximately 15 years ago when he was 18 years old. He
10 has six misdemeanors, all of them domestic violence.

11 Not one of these convictions suggests that he has
12 ever failed to appear for any court appearance whatsoever.

13 I have a letter from his employer which I will tender
14 to the Court indicating that he -- that he is employed.

15 May I approach?

16 THE COURT: Yes, please.

17 MR. MORGAN: That he is --

18 THE COURT: What -- but don't skip over the violence
19 issue. I mean, say there are six, six domestic violence, so
20 he is not a risk of flight, but what do I do about the --

21 MR. MORGAN: But he --

22 THE COURT: -- the violence to anybody, the -- not
23 the violence, I'm sorry -- the risk of danger to other people
24 in the community with that sort of a background.

25 MR. MORGAN: The domestic violences are all related

1 to an old girlfriend out of Battle Creek. He indicates to me
2 that she constantly called the police. You'll notice that
3 most of them, they were reduced to something. And she was a
4 person who, whenever she got angry, she called the police and
5 he got charged. And all of those took place between 19 --
6 2003, all in Battle Creek.

7 There is -- there is not another one after that time,
8 domestic violences. There's -- there are some assaults that
9 are -- have unknown dispositions.

10 Of the 14 so-called charges, six of them are
11 misdemeanors. Four of them are unknown. The three felonies,
12 four of the -- three of the four felonies all took place at
13 age 18.

14 He has a job. He has two children. Mrs. Brenda
15 [sic] Sykes, who she suggests left earlier today was, in fact,
16 here. She -- if she had been here, she would have indicated
17 to the Court that she -- that she was prepared for him to stay
18 there. It's his home.

19 And you will notice again on the presentence -- on
20 the Pretrial Services report indicates that he owns the home
21 on Rox -- I believe it's Roxanne --

22 THE DEFENDANT: Roanne.

23 MR. MORGAN: Roanne in Fair Haven. Owns property.

24 Judge, the violence, the violence in this particular
25 case are all misdemeanors except for one. It took place in

1 2007, a felonious assault, which he spent ten months in jail.

2 THE COURT: That, that's the --

3 MR. MORGAN: That's the one out of -- they think is
4 out of Port Huron, St. Clair County.

5 THE COURT: And what about this one in 2004, the
6 felony home invasion?

7 Oh, I see, pled guilty to a misdemeanor.

8 MR. MORGAN: Yes. Most of them were reduced, Judge.
9 Having done this for a long time, if you look at these things,
10 you notice that most of them were reduced to misdemeanors,
11 which suggests that the proofs may or not -- may or may not
12 have been that great to begin with.

13 He has ties to this community living here 34 years.
14 He has two children. He has a fiancée, Mrs. April Sykes.

15 Even though she suggests to this Court that she has
16 warrants, I -- I can't speak on that at all. She -- when I
17 talked to her, she said, no, not -- one of those warrants,
18 by the way, supposedly is a traffic warrant. The other
19 one is supposedly something out of Indiana, per -- per the
20 U.S. Attorney.

21 These allegations about the Devil's Disciples,
22 Judge, there has been no charges brought against the Devil's
23 Disciples that I know of relating to this, this case at all.

24 She talks about there are numerous motorcycle gangs
25 in the Eastern District, but that doesn't mean all of them are

1 violent gangs. If, in fact, at a later date they bring to
2 this Court an indictment suggesting that they are a danger or
3 they are doing the kinds of things that she suggests, that's
4 when it should be concerned. Right now they are only an
5 association.

6 THE COURT: But I have to -- I have to consider the
7 Defendant's characteristics, which I -- as I understand what
8 they are saying is, the underlying assault has not been
9 charged, but it resulted in a search warrant that resulted
10 in finding the gun that's the basis of the charge, but that
11 the -- the circumstance leading up to the search warrant was
12 this --

13 MR. MORGAN: An assault.

14 THE COURT: -- relatively brutal assault.

15 MR. MORGAN: But not by my client. Even -- even she
16 couldn't say that. She said he may have pushed him.

17 THE COURT: Right. He's there.

18 MR. MORGAN: He's there.

19 THE COURT: What does he do to prevent this man from
20 being --

21 MR. MORGAN: Judge, but --

22 THE COURT: -- beaten unconscious?

23 MR. MORGAN: -- merely present is not guilt.

24 THE COURT: No, I'm not -- I'm not saying -- I'm not
25 suggesting --

1 MR. MORGAN: I mean, but that's all this --

2 THE COURT: I'm not suggesting guilt.

3 MR. MORGAN: He's merely present.

4 THE COURT: I'm trying to analyze danger to community.

5 And so is it -- does it make you a danger when you're with
6 people, and you're with people that it ends up resulting in
7 somebody being beaten unconscious?

8 MS. MOHSIN: May I, your Honor?

9 MR. MORGAN: No, no. No, no.

10 THE COURT: Mr. Morgan.

11 MR. MORGAN: No, no.

12 Judge, there is a condition -- you can put him on
13 a tether. You can have a -- have a -- have a curfew. He can
14 go to work and back home.

15 His wife has seizures. His ten -- ten-day-old --
16 month-old baby also has seizures. He needs to be there for
17 his family.

18 He is prepared to do anything that this Court orders
19 him to do. And I believe there are conditions that can be set
20 that would ensure that -- number one, there is no suggestion
21 that he has never appeared with all of these contacts. And
22 that certainly should say something to the Court in terms of
23 the contacts and there never being the suggestion of him bench
24 warranting, ever. That's -- that's a good -- that's a good
25 statement to look to.

1 Secondly --

2 THE COURT: I agree. I'm more concerned, I'll tell
3 you, about the -- the danger factor and -- and --

4 MR. MORGAN: And I believe that the Court, as I said,
5 can -- can fashion a condition where he goes to work. He has
6 a -- he has employment. Before that he was a -- he was --
7 he did tattoo -- he is a welder by trade. That -- and --
8 and -- and that's in the presentence -- the Pretrial Services
9 report, your Honor.

10 I'm suggesting to this Court that the violence,
11 although they -- I don't want to call it minimum, but most
12 of them evolved around a girlfriend.

13 The allegation of the assault back in January -- and
14 let's talk about January. They came to his house in January.
15 He didn't flee.

16 They brought him down before a grand jury. He didn't
17 flee.

18 They talked to him. That's why she has an FBI-6,
19 302. They talked to him. He didn't flee.

20 He hasn't assaulted anyone else. He's been here.
21 He didn't run. Con -- what more contact can one have than
22 knowing he has a problem and he stays here.

23 I -- the Court suggests that she is concerned about
24 the violence, Judge, but other than the domestic violence with
25 the alleged girlfriend, who I suggest called every time she

1 got into an argument and put him in jail, is what he tells me.
2 And this is a proffer, so all I can tell you is what she --
3 he tells me.

4 All we have is the other -- the only other violence
5 being a felonious assault that was re -- pled down to. And
6 no weapons. I think that's important. No guns. No guns.
7 No suggestion of any kind of dangerous weapon at all, Judge.

8 There are conditions that this Court can set that
9 would ensure his appearance and that he will never have
10 contact with anyone other than to go to work.

11 THE COURT: Mr. Morgan, about the shotgun that's
12 in the home --

13 MR. MORGAN: If -- if -- if --

14 THE COURT: -- of somebody with felony convictions.

15 MR. MORGAN: If -- if you will note, Judge, the
16 shotgun, they don't even know if it was operable or not. It
17 was there before he moved into the home. They found a shotgun
18 and three shells. The shells don't even match the shotgun.
19 There was no -- there was no bullets in the shotgun at all.
20 A different model, different shells.

21 THE COURT: What do you mean, if it was operable?
22 If you had the right shells, did it work?

23 MR. MORGAN: No, I'm saying that they -- they
24 indicate that they have not determined whether or not the
25 shotgun, in and of itself, was operable, that it could be

1 fired. He -- he maintains that it was not operable at all.
2 And he says he never had any shells for that shotgun at all.
3 There were three shells.

4 He moved in the house. There was an armoire. In
5 that armoire was the shells that they found. The shotgun
6 was -- he maintains, was not operable and -- and it had never
7 been used and there was no shells in it at all.

8 So we -- we stand before the Court being charged with
9 felon in possession of a firearm and they are asking for
10 detention.

11 THE COURT: Okay. Thank you.

12 Ms. Mohsin, anything you want to --

13 MS. MOHSIN: You know, Judge, I just don't want the
14 record to be mis -- to be -- to reflect what I think is
15 somewhat of a mischaracterization as far as what this
16 Defendant's role was that night when he went into the --
17 the bar close to closing time and approached this victim.

18 He approached the victim. He demanded the colors
19 be taken from the victim. He was involved. He pushed the
20 victim and the other -- he alleges that the other individual
21 actually punched the victim.

22 I don't know that that's necessarily how the facts
23 will bear out in that, that assault case. What I'm suggesting
24 is that he was not merely present. This is not a mere
25 presence, by far.

1 And to suggest that the Defendant had a domestic
2 relationship with a woman and was convicted six times --

3 MR. MORGAN: That's not true, Judge.

4 MS. MOHSIN: Am I misstating?

5 MR. MORGAN: Yes, you are, as usual. Three times in
6 Battle Creek for domestic violence.

7 THE COURT: Oh, don't -- don't make it -- how many
8 times was he convicted of --

9 MS. MOHSIN: Hang on, Judge, because I have it
10 written down here.

11 Six misdemeanor convictions, four times for domestic
12 assault. Three times they were dismissed.

13 To suggest that that's nothing but a woman who is
14 just complaining about her boyfriend, I think, is -- you know,
15 that -- I just don't understand how counsel can make such an
16 argument. The man has four convictions for domestic violence
17 since 2003, three more that were dismissed.

18 The record speaks for itself. He has a total of six
19 misdemeanor convictions. We don't have that woman here. And
20 I don't think we need to have any other information. The fact
21 is, he was convicted of those offenses and they involved
22 domestic violence. He has an assault with a dangerous weapon
23 conviction, as well.

24 So I just don't want the record to reflect something
25 different than, you know, what's in the Pretrial Services

1 report. So I wanted the Court to be clear about that.

2 I don't have anything else to add. I don't think
3 I said on the record that the Government agrees with the
4 Pretrial Services recommendation here, which is detention.
5 I think that, you know, that was also Pretrial Services'
6 recommendation and we agree with that recommendation.

7 MR. MORGAN: Judge, if you look at the Pretrial
8 Services report, 12/10/03, 12/10/03, 12/4/03, all are domestic
9 violence arising out of Battle Creek. The other domestic
10 violence occurs in '07, along with a felonious assault charge,
11 they get ten months for.

12 The -- other than that, the domestic violence relates
13 to one woman who I suggest to this Court was calling the
14 police, and if you look at how they were taken care of, and
15 he was never charged with a felony on any of them. And that
16 should have happened in state court.

17 As it -- as it relates to the assault, Judge, he was
18 there. She keeps saying he pushed him. That's only an
19 allegation. It's nothing -- they don't say he hit him. They
20 say he pushed him.

21 Other than that, what's before this Court to suggest
22 that this man, in the last four or five years, since he has
23 had these children, since he has been engaged with Mrs. Sykes
24 has been involved in any -- with any kind of violent activity?

25 THE COURT: Well, I don't think, Mr. Morgan -- I

1 mean, I just -- I don't think you want to overstate it too
2 much. As I said, you have got a situation where he admits to
3 being present with a group of people and an individual gets
4 assaulted to the point that he is beaten unconscious.

5 A search warrant is executed where the vest that this
6 man was wearing is found in the Defendant's home. So I don't
7 know that you can say there's -- there's no connection there.

8 MR. MORGAN: I'm not. Judge, I'm not. All I'm
9 suggesting to this Court, that there are --

10 THE COURT: It's almost like it's a souvenir.
11 This -- he knows this person's been beaten unconscious.
12 He's there. You're saying, well, he may not have physically
13 delivered the blows, but he took the prize.

14 MR. MORGAN: Well, he took -- he took the -- he took
15 the vest or the vest was there. Whether he brought it there
16 or someone else brought it, it was in his home.

17 THE COURT: Right.

18 MR. MORGAN: But as to whether or not, Judge, there
19 are conditions that can be -- that can be found that will
20 ensure his appearance and that his -- and ensures that he --
21 that he will not hurt anyone in society, I think there can be.
22 As I said, a tether would certainly make sure he is home and
23 not in the streets.

24 THE COURT: Okay. No, you have -- I'll take -- you
25 both make very good and compelling arguments and it's not an

1 easy decision.

2 The Court tends and does rely on the individual
3 factors that I have to consider under the Bail Reform Act in
4 determining whether to detain or release Mr. Villa. Those
5 include the nature and circumstance of the underlying offense.

6 We are dealing with a felon in possession charge, so
7 I have got somebody with prior felony convictions who is found
8 to be in possession of a shotgun.

9 I have to consider the weight of the evidence against
10 the Defendant in terms of the underlying charge, that that
11 seems to be pretty strong. I don't think there is really much
12 dispute that the gun was found in the home and that there are
13 the prior felony convictions.

14 The history and characteristics of the Defendant,
15 there's been some conflicting evidence presented about the
16 Defendant's ties. I do think it's clear he has lived here.
17 I think the Government's position is, there is not a lot of,
18 perhaps, family ties or employment ties or monetary ties that
19 tie the Defendant to this District.

20 But as I said, my issue, I'm concerned more with
21 danger to the community than I am risk of flight. And -- and
22 that comes from the underlying incident that the Government
23 has proffered that involved an individual at a bar, seemingly
24 an innocent victim, whose jaw was broken and he was rendered
25 unconscious.

1 There is no dispute the Defendant was part of that.
2 There is a dispute whether he is the one who actually
3 inflicted the blows, but he was part of it.

4 And a search warrant found this victim's vest and
5 items from his vest in the Defendant's home, which is
6 certainly troublesome to the Court.

7 The prior criminal history, there -- there is a
8 history of prior assaultive behavior which the Pretrial
9 Services report points out. And all of that goes into
10 the nature and seriousness of the danger to the community.

11 Considering all of the factors together, I am going
12 to accept the recommendation of Pretrial Services. I am
13 going to order that Mr. Villa be detained. I think the
14 Government has met its burden. And I will issue a written
15 report to that effect.

16 MR. MORGAN: Your Honor, is the Court suggesting that
17 there aren't any -- there aren't any conditions that -- that
18 could be set that would, in fact, ensure the safety of the
19 community?

20 THE COURT: Yes. That is -- that is my ruling, and
21 I will issue a written order to that effect.

22 And Mr. Villa, you do have a right to appeal to
23 the -- to the District Judge on duty.

24 Thank you.

25 MR. MORGAN: Thank you very much, your Honor.

1 MS. MOHSIN: Thank you, your Honor.

2 THE CLERK: Preliminary --

3 THE COURT: Oh, yes. Thank you, Jane.

4 We do -- I'm sorry, we need to set this matter for
5 preliminary examination.

6 THE CLERK: It would be 14 days, since he is being
7 detained, so that would be May 22nd.

8 THE COURT: From the 8th.

9 THE CLERK: From the 8th.

10 THE COURT: Looks like it was his initial --

11 THE CLERK: That would be May 22nd.

12 THE COURT: Okay.

13 MS. MOHSIN: Thank you, your Honor.

14 MR. MORGAN: Thank you.

15 THE COURT: May 22nd, from the initial appearance.
16 Thank you.

17 THE CLERK: Yeah, that's from May 8th.

18 (Proceedings adjourned at 3:54 p.m.)

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2 CERTIFICATE OF TRANSCRIBER

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4 I do hereby certify that the foregoing is a
5 correct transcription from the digital sound recording
6 of proceedings in the above-entitled cause on the date
7 hereinbefore set forth and has been prepared by me or
8 under my direction.

9
10 s/ Rene L. Twedt
11 RENE L. TWEDT, CSR, RMR, CRR
12 Federal Official Court Reporter
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